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HOUSE BILL 513 By
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SENATE BILL 1523
By Kyle

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 4,
relative to governmental accountability and to repeal
Chapter 875 of the Public Acts of 2002.

WHEREAS, state agencies should be granted sufficient authority and flexibility to use their resources in the best possible way in order to better serve the citizens of the state of Tennessee through the efficient delivery of services and products and the effective administration of governmental programs; and

WHEREAS, state agencies should be held accountable for the services and products they deliver, and each state agency's mission, goals, and objectives should be clearly defined and performance measures for evaluating performance and assessing progress in achieving goals and objectives should be developed, integrated into the planning and budgeting process, and maintained on an ongoing basis; and

WHEREAS, state agencies should have incentives to deliver services and products in the most efficient and effective manner, and, if appropriate, to recommend the restructuring of ineffective programs or the elimination of unnecessary programs; and

WHEREAS, state agencies should have their performance in achieving desired outcomes and in efficiently operating programs measured and evaluated in an effort to improve program coordination, eliminate duplicative programs or activities, and provide better information to the governor, the general assembly, and state agencies; and

WHEREAS, state agencies should strive to keep the citizens of this state informed of the public benefits derived from the delivery of state agency services and products and of the progress state agencies are making with regard to improving performance; and

WHEREAS, the legislative and judicial branches must independently carry out their mandates provided by the Tennessee constitution, but nonetheless should endeavor to develop performance measures to evaluate certain functions of the legislative and judicial branches to encourage efficient performance of their duties for the benefit of the public; and

WHEREAS, the general assembly has recognized the value and usefulness of these measures with the national center for public policy and higher education and desires to apply these principles across state government; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 875 of the Public Acts of 2002 is repealed.

SECTION 2. Tennessee Code Annotated, Title 9, Chapter 4, is amended by creating the following new, appropriately designated part:

9-4-5601. This part shall be known and may be cited as the
"Performance-Based Budgeting and Program Review Act of 2003."

9-4-5602. The general assembly finds and declares that accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government. To maximize accountability, a system of strategic planning, performance-based

budgeting, and performance audits should be implemented to measure the effectiveness and efficiency of governmental services. It is of paramount public importance that this system encourages full and candid participation by all agencies of state government. This system will generate information necessary for the public to be informed fully and for the general assembly to make meaningful decisions about the allocation of scarce resources in meeting vital needs.

9-4-5603. The strategic planning, performance-based budgeting, and performance audit requirements of this part shall apply to all executive state departments, agencies, boards and commissions.

9-4-5604. For purposes of this part, the following terms shall have the following meaning unless the context requires otherwise:

(1) "Agency" or "state agency" means any unit of organization of the executive department, including any official, officer, department, board, commission, division, bureau, section, district, office, authority, committee, or council or any other unit of government, however designated.

(2) "Baseline data" means indicators of a state agency's current performance level, pursuant to guidelines established jointly by the executive office of the governor and the commission on governmental accountability established by this part, subject to approval by the general assembly.

(3) "Commission" means the commission on governmental accountability established in this part.

(4) "Outcome" means an indicator of the actual impact or public benefit of a program.

(5) "Output" means the actual service or product delivered by a state agency.

(6) "Performance-based program budget" means a budget that incorporates approved programs and performance measures.

(7) "Performance measure" means a quantitative or qualitative indicator used to assess state agency performance.

(8) "Program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives.

(9) "Standard" means the level of performance of an outcome or output.

9-4-5605.

(a) A commission on governmental accountability is hereby established consisting of the comptroller of the treasury, the director of the office of legislative budget analysis, the director of the fiscal review committee, and the commissioner of finance and administration. The members of the commission shall elect a chairperson to serve for a one (1) year term. The chair of the commission shall rotate and the person holding each office represented on the commission shall serve as chairperson once during each four (4) year period.

(b)

(1) The commission shall perform duties assigned to it under this part. The members of the commission shall utilize their existing staff in performing such duties.

(2) The executive office of the governor and state agencies shall perform duties assigned to them under this part using existing resources, it being the legislative intent that the

requirements of the Performance-Based Budgeting and Program Review Act of 2003 constitute a new approach to the budgeting process, rather than an addition to existing procedures.

(c) The commission shall have authority to employ outside consultants with expertise in governmental accounting for the purpose of conducting performance audits or otherwise fulfilling its duties under this part.

9-4-5606.

(a) The executive office of the governor and the commission, after discussion with the senate and house finance, ways and means committees and the appropriate substantive committees, shall jointly develop instructions for the development of performance measures for each program on the list approved as provided in Section 9-4-5103(b) and shall submit such instructions to the state agencies prior to December 1 of the fiscal year preceding the fiscal year in which a state agency is required to submit a performance-based program budget request.

(b) Prior to June 1 each year, each state agency subject to performance-based budgeting is required to submit to the executive office of the governor and the commission proposed performance measures for each program on the approved list required pursuant to Section 9-4-5103(b). Such state agencies shall also identify the outputs produced by each approved program, the outcomes resulting from each approved program, and baseline data associated with each performance measure. Performance measures shall be reviewed by the executive office of the governor and the commission, after discussion with the senate and house

finance, ways and means committees, the appropriate standing committees, and the commission, revised as necessary, and approved or disapproved within thirty (30) days of receipt.

(c) Notwithstanding the programs, performance measures, and standards requested in the budget document submitted pursuant to Section 9-4-5106, the general assembly shall have final approval of all performance measures and standards through the appropriations act and shall have discretion in the appropriations act, consistent with otherwise applicable requirements of general law, to increase, reduce, eliminate, or otherwise alter the appropriation to a state agency based upon such agency's compliance with its performance measures and standards.

(d) Each state agency subject to performance-based budgeting shall submit documentation to the executive office of the governor and the commission regarding the validity, reliability, and appropriateness of each performance measure. In addition, each state agency shall indicate how the performance measure relates to its strategic plan and how it is used in management decision-making and other agency processes.

(e)

(1) Annually, no later than forty-five (45) days after the general appropriations act becomes law, state agencies may submit to the executive office of the governor and the commission any adjustments to their performance standards based on the amounts appropriated for each program by the general assembly.

(2) At any time during the fiscal year in which a state agency, by restraining order, injunction, consent decree, settlement, or any final judgment of a court of competent

jurisdiction, is required to modify its operations, or the state agency receives additional federal or other funding, the state agency may submit to the executive office of the governor and the commission any adjustments to its performance standards required by such court order, consent decree, settlement, or additional funding.

(3) When such adjustment is made pursuant to subdivisions (1) and (2), all performance standards, including any adjustments made, shall be submitted to and reviewed and revised as necessary jointly by the executive office of the governor and the commission. The executive office of the governor and the commission shall jointly maintain the official record of adjustments to the performance standards.

(f) A state agency subject to performance-based budgeting shall not have the authority to amend or establish programs or performance measures but may propose a revision to the list of its approved programs or performance measures.

9-4-5607. The commission shall develop a schedule for including state agencies within performance-based budgeting, beginning with three (3) agencies selected for fiscal year 2004-2005. All agencies of state government shall be included in performance-based budgeting not later than fiscal year 2011-2012.

9-4-5608.

(a) The commission shall at least annually, and more frequently if necessary, evaluate each state agency's compliance with performance-based measures and shall report to the senate and house finance, ways and means committees, the appropriate substantive committees, and the

executive office of the governor concerning each agency's compliance with performance-based measures. Such reports shall include comments from the state agency. Such reports shall be timely furnished, and updated if necessary, for use by the senate and house finance, ways and means committees in consideration of the appropriations act.

(b) The commission's report as to each state agency's compliance may contain recommendations to the senate and house finance, ways and means committees concerning the following non-exhaustive performance measure incentives or disincentives for potential inclusion in the appropriations bill:

(1) Incentives may include, but are not limited to:

(A) Additional flexibility in budget management;

(B) Additional flexibility in salary rate and position management;

(C) Retention of up to fifty percent (50%) of unexpended and unencumbered balances of appropriations, excluding special categories and grants and aids, that may be used for non-recurring purposes including, but not limited to, lump-sum bonuses, employee training, or productivity enhancements, including technology and other improvements; and

(D) Additional funds to be used for, but not limited to, lump-sum bonuses, employee training, or productivity enhancements, including technology and other improvements.

(2) Disincentives may include, but are not limited to:

(A) Mandatory quarterly reports to the executive office of the governor and the commission, posted on the state of Tennessee's website, on the agency's progress in meeting performance standards;

(B) Mandatory quarterly appearances before the general assembly, the commission, the governor, or the governor and cabinet to report on the agency's progress in meeting performance standards;

(C) Elimination or restructuring of the program, which may include, but not be limited to, transfer of the program or outsourcing all or a portion of the program;

(D) Reduction of total positions for a program;

(E) Restriction on or reduction of the appropriation for the program; and

(F) Reduction of managerial salaries, notwithstanding the requirements of Section 65-1-302 or any other law to the contrary.

9-4-5609. Notwithstanding any law to the contrary, no funds shall be transferred within or between state agencies to compensate, directly or indirectly, for any incentives or disincentives in the appropriations bill, or any other funding increase or reduction, relative to performance-based budgeting.

SECTION 3. Tennessee Code Annotated, Section 9-4-5103, is amended by deleting that section in its entirety and by substituting instead the following new language:

(a) On or before December 1 of each year, all departments, offices, and agencies of the state government shall prepare, in a written or electronic format

determined by the commissioner of finance and administration, and submit to such officer, estimates of their expenditure requirements for the next fiscal year compared with the corresponding figures of the last completed fiscal year and estimated figures for the current fiscal year. The expenditure estimates shall be classified to set forth the data by funds, organization units, character and objects of expenditure; the organization units may be subclassified by function and activities, or in any other manner at the discretion of the commissioner. Any state agency subject to performance-based budgeting requirements under subsection (b) shall include with its submission a listing of its proposed state agency programs as approved by the governor under subsection (b).

(b)

(1) Prior to October 15 preceding the fiscal year in which a state agency is required to submit a performance-based program budget request, such state agency shall identify and submit to the executive office of the governor a list of proposed state agency programs. Such identification shall be conducted after discussion with the commission on governmental accountability. The governor shall, after discussion with the senate and house finance, ways and means committees and the commission on governmental accountability, review the list and make any changes or modifications within thirty (30) days of receipt. The list, as approved by the governor, shall be used in complying with the requirements of subsection (a).

(2) The following documentation shall accompany the list of proposed programs submitted by the state agency:

(A) Identification of the customers, clients, and users of each program;

(B) The purpose of each program or the benefit derived by the customers, clients, and users of the program;

(C) Direct and indirect costs of each program;

(D) Sources of funding for each program, broken down into federal dollars, state tax revenue, and fees;

(E) Information on fees collected and the adequacy of those fees in funding each program for which the fees are collected;

(F) An assessment of whether each program is conducive to performance-based budgeting; and

(G) An assessment of the time needed to develop meaningful performance measures for each program.

SECTION 4. Tennessee Code Annotated, Section 9-4-5106, is amended by adding the following new subsection:

(c) The budget document shall include a performance-based program budget for all state agencies subject to performance-based budgeting.

SECTION 5. Tennessee Code Annotated, Section 9-4-5108, is amended by adding the following new subsections:

(e) For programs operating under performance-based program budgets, the appropriations bill shall contain summary information that covers specific appropriations and summarizes programs and performance.

(f) The appropriations bill may specify incentives or disincentives relative to performance-based budgeting as recommended by the commission on governmental accountability. The general assembly is not limited to the recommendations of the commission in incorporating such incentives and disincentives in the appropriations bill.

SECTION 6. This act shall take effect upon becoming law, the public welfare requiring it.